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City of San Jose
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

13 Plaintiff,
14

15 v.

16 CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10 inclusive.

18 Defendants,
19

20 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS
21

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

Assigned for all purposes to the Honorable Patricia
M. Lucas

NOTICE OF MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS BY CITY
OF SAN JOSE

Date: January 29, 2013
Time: 9:00 a.m.
Courtroom: 2

Complaint Filed: June 6, 2012
Trial Date: None Set

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on January 29, 2013 at 9:00 a.m. in Department 2 of the
24 above-entitled Court, located at 191 North First Street San Jose, California 95113, or as soon
25 thereafter as the matter may be heard, defendant City of San Jose ("City") will move for judgment
26 on the pleadings as to certain causes of action alleged in the Complaints filed by the American
27 Federation of State, County, and Municipal Employees, Local 101 ("AFSCME"), and the San Jose
28 Police Officers Association ("SJPOA").

1 Defendants' motion for judgment on the pleadings is filed under Code of Civil Procedure
2 section 438 because AFSCME's second (Bill of Attainder), fifth (Pension Protection Act), sixth
3 (Right to Petition), and seventh (Illegal Tax) causes of action, and SJPOA's fourth (Right to
4 Petition), fifth (Separation of Powers), and eighth (Pension Protection Act) causes of action do not
5 state facts sufficient to state a cause of action. In addition, although they did not plead violation of
6 California Civil Code section 52.1 as a separate cause of action, plaintiffs AFSCME and SJPOA
7 assert violation of California Civil Code section 52.1 in each of their California constitutional
8 causes of action, specifically, AFSCME's first seven causes of action and the SJPOA's first
9 through fifth and eighth causes of action. Because an alleged violation of Section 52.1 may be
10 deemed a single cause of action under California's primary right theory, this motion is also
11 brought on the ground that both AFSCME and the SJPOA fail to state facts sufficient to state a
12 cause of action for violation of California Civil Code section 52.1. *Coachella Valley Unified*
13 *School Dist. v. California*, 176 Cal. App. 4th 93, 125-126 (2009). In the alternative, the City asks
14 the Court to strike all allegations concerning Section 52.1 under Code of Civil Procedure § 436(a)

15 Pursuant to Code of Civil Procedure section 438(d), please note that the City is requesting
16 judicial notice of and relying on the text of Measure B, which is quoted throughout plaintiffs'
17 complaints, as well as San Jose City Ordinance No 29174, enacted by the San Jose City Council
18 on December 4, 2012, which implements certain sections of Measure B.

19 The City's motion for judgment on the pleadings will be based on this Notice and Motion,
20 the accompanying Memorandum of Points and Authorities, the accompanying Request For
21 Judicial Notice in Support of Defendants' Motion for Judgment on the Pleadings, all other
22 pleadings and papers on file in this action, and such other and further argument and matters
23 subject to judicial notice as shall be received by the Court at the time of the hearing.

24 DATED: December 19, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

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26 By: 

Linda M. Ross
Attorney for Defendant
City of San Jose

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